IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7923 OF 2007

Shri Macchindra Gunwantrao
Kamant and others .... Petitioner

versus

Shri Nivrutti Balaji Jambhulkar
and others ..... Respondent.

Shri S.D. Paigude for the petitioner.
Shri A.V.Anturkar i/b. Mr. S.B.Deshmukh for
respondent nos. 1 to 12.
Shri R.M.Patne AGP for State.

CORAM; A.P. DESHPANDE, J.
DATED; 31ST OCTOBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The respondents instituted a suit before the Mamlatdar under the provisions of Mamlatdar Courts Act claiming a right of way from the land of the present petitioner. The petitioner moved an application for rejection of the plaint under section 12 of the Act. The application for rejection of the plaint moved by the petitioner came to be rejected by an order dated 8-10-2007. Aggrieved by the rejection of the application seeking rejection of the plaint the

petitioner filed a revision before the Sub Divisional Officer under section 23 on 18-10-2007. According to the petitioner, the counsel for the petitioner urged the Sub Divisional Officer, to grant an urgent hearing but as the Sub Divisional Officer refused to grant the hearing, immediately,this petition came to be filed on the very next day i.e. on 19-10-2007. The learned counsel for the petitioner submits that on one hand the Revisional Authority is not granting hearing to the petitioner in the revision which he has filed and on the other hand the Mamlatdar is proceeding with the suit expeditiously. The apprehension of the petitioner is that before the revision is taken up for hearing the suit itself would stand concluded.

3. The learned counsel for the respondents opposed the petition by contending that without moving the Sub Divisional Officer for stay of the proceedings pending on the file of Mamlatdar, hurriedly the present Writ Petition has been filed without availing the revisional remedy available under the Act. I do not propose to go into the disputed questions at this stage, having regard to the submissions made by the learned AGP. The learned AGP on instructions from the officer from the office of the Mamlatdar and Sub Divisional Officer, makes a statement that it would be feasible for the Sub Divisional Officer to decide the

revision itself within a period of two weeks from today. it is also stated that till the revision is heard and decided, Mamlatdar will not proceed with the suit. In this view of the matter, I deem it appropriate to direct the Sub Divisional Officer to decide the revision within a period of two weeks from today and till the decision of the revision, Mamlatdar shall not proceed further with the trial of the suit.

4. Both the learned counsel appearing for the respective parties submit that they would be appearing before Sub Divisional Officer on Monday the 5th November 2007 and hence no individual notice be issued by the Sub Divisional Officer. In this view of the matter, I direct Sub Divisional Officer to decide the revision filed by the present petitioner within a period of two weeks from today. Till the decision of the revision, Mamlatdar shall not proceed further with the trial of the suit. Notices from the revisional authority to the parties stands dispensed with as the parties have undertaken to remain present before Sub Divisional Officer on Monday the 5th November 2007.

5. Rule made absolute in the above terms.

....